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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 86

HURON PORTLAND CEMENT COMPANY,
a Michigan corporation,
Appellant,
vs.
CITY OF DETROIT, a Michigan municipal corporation,
BENJAMIN LINSKY, Chief, Bureau of Smoke
Abatement, P. J. LAREAU,
Appellees

APPEAL FROM THE SUPREME COURT OF THE STATE
OF MICHIGAN

BRIEF FOR THE APPELLANT

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OPINION BELOW

The Opinion of the Supreme Court of Michigan (R. 28-34) is reported at 355 Mich. 227 and 93 N. W. 2d 888 (1959).

JURISDICTION

The decree of the Supreme Court of the State of Michigan was entered January 12, 1959 (R. 35). Notice of appeal to the Supreme Court of the United States was filed with the Clerk of the Circuit Court for the County of Wayne, Michigan (that being the court possessed of the record) on April 9, 1959 (R. 1). The jurisdictional statement was filed June 1, 1959. Probable jurisdiction was noted in this case on October 12, 1959 (R. 44). The jurisdiction of this Court rests on 28 U. S. C. 1257 (2).

CONSTITUTIONAL PROVISION, STATUTES AND ORDINANCE INVOLVED

Article I, Sec. 8, Clause 3 of the Federal Constitution grants to Congress the power: "To regulate Commerce with foreign Nations, and among the several States and with the Indian Tribes;".

The statutes compiled under Title 46—Shipping—of the United States Code are involved. The more pertinent ones are: The first paragraph of 34 Stat. 68, 46 U. S. C. 362 (1952 ed.); R. S. 4401, 46 U. S. C. 364 (1952 ed.); 70 Stat. 223 (b), 46 U. S. C. 391 (1952 ed. Supp. V); 70 Stat. 224 (b) and (c), 46 U. S. C. 392 (1952 ed., Supp. V); 69 Stat. 86, 46 U. S. C. 399 (1952 ed., Supp. V); 53 Stat. 798, 46 U. S. C. 496 (1952 ed.); 49 Stat. 1367, 46 U. S. C. 263 (1952 ed.) These statutes are lengthy and their pertinent text is set forth in an appendix attached hereto.

Ordinance No. 163-E of the City of Detroit is affixed to page 37 of the record. The more pertinent provisions

of the ordinance, to wit, Sections 2.2A, 2.16, 2.17, 2.20, 2.21 and 3.2 are lengthy and are set forth in the appendix attached hereto.

QUESTIONS PRESENTED

1. Where Congress has provided for the inspection and licensing of vessels engaged in interstate commerce and appellant's vessels have been inspected by the United States Coast Guard and granted permission to navigate on the Great Lakes and have been enrolled and licensed by the Treasury Department of the United States to carry on coasting and foreign trade, is the smoke ordinance of the City of Detroit, Michigan valid as to said vessels, when it provides for the inspection of the boilers on the vessels and prohibits their use, and are the penalty provisions of said ordinance valid as to appellant's vessels when the prohibited smoke cannot always be prevented by the boilers inspected, approved and licensed by the United States?

2. Where the smoke ordinance of the City of Detroit, Michigan provides for the inspection of combustion equipment and prohibits use of certain kinds of boilers and equipment on vessels engaged in interstate and foreign commerce on the Great Lakes, and prohibits the emission of smoke which cannot be prevented at all times with boilers and equipment commonly used on the Great Lakes, does such ordinance unduly burden interstate and foreign commerce in matters where uniformity is necessary under the Commerce Clause of the United States Constitution, Article I, Section 8, Cl. 3?

STATEMENT

Appellant's fleet, which is engaged in interstate commerce, consists of four steamships and one motor vessel (R. 17, 29). It transports bulk cement from appellant's mill at Alpena, Michigan to its distributing plants located in various cities on the Great Lakes (R. 17). The four steamships are equipped with hand fired scotch marine boilers (R. 17).

These vessels are subject to inspection by the United States Coast Guard and the Certificate of Inspection as to S.S. S. T. Crapo was introduced in evidence as plaintiff's Exhibit 2 (R. 19, 38-41). This Certificate contains the following sentence: "The said vessel is permitted to be navigated for one year on the Great Lakes" (R. 39). The vessels are also enrolled with the Treasury Department of the United States Bureau of Customs. The Consolidated Certificate of Enrollment and License as to S.S. John W. Boardman was introduced as plaintiff's Exhibit A (See photostat opposite R. 42). This Certificate which is issued by the Bureau of Customs contains this license: "License is hereby granted for the said vessel to be employed in carrying on the COASTING AND FOREIGN TRADE for ONE YEAR from the date hereof, and no longer." It is conceded that Certificates of Inspection, like plaintiff's Exhibit 2, and Certificates of Enrollment and License, like plaintiff's Exhibit A, were issued for each vessel.

On December 20, 1955, two criminal cases were started in the Recorder's Court for the City of Detroit, Traffic and Ordinance Division. One case named appellant and the officers of S.S. John W. Boardman as defendants and the

other appellant and the officers of S.S. S.T. Crapo (R. 18). In these cases, it was charged that appellant and the other defendants had violated the criminal provisions of the smoke ordinance of the City of Detroit, in that the emission of smoke of the kind prohibited by the ordinance had been permitted for a period of nine or ten minutes on December 12, 1955 while the vessels were docked at the foot of Riopelle Street in the City of Detroit, Michigan (R. 18). This ordinance was introduced at the trial as plaintiff's Exhibit 5 and a copy of the same is attached to page 37 of the record.

Appellant filed a bill of complaint in the Circuit Court for the County of Wayne, Michigan, alleging that its fleet was engaged in interstate and foreign commerce and that the Constitution of the United States gave Congress full and complete authority and power to regulate such commerce and that Congress had enacted laws and regulations covering the construction, equipment and operations of vessels engaged in interstate commerce on the Great Lakes. The bill further alleged that appellant's vessels had been inspected and approved by the United States Coast Guard (R. 5). It was also alleged that it was necessary for its fleet to dock in the City of Detroit to unload cement and during that time full steam in the boilers had to be maintained and every four hours the fire under the boilers had to be cleaned. When a fire is cleaned it is impossible to prevent the emission of the kind of smoke prohibited by the Detroit smoke ordinance with the equipment which had been approved by the United States Coast Guard (R. 4, 18). Appellant sought to enjoin the prosecution of the two criminal cases and to enjoin the enforcement of the Detroit smoke ordinance against it unless the emission of the prohibited smoke is caused by improper firing or by the improper use of the equipment on said vessels (R. 7).

The S.S. S. T. Crapo docked at Detroit, in 1955, twenty-two times for an average docking time of 23.9 hours and S.S. John W. Boardman docked at Detroit, twenty-five times during that year, with an average stay of 16.2 hours (R. 19).

At the trial, it was conceded that the Detroit smoke ordinance could not be complied with at all times with hand fired scotch marine boilers (R. 18). It appeared that the smoke ordinance could be complied with if oil burning equipment or a well constructed underfeed stoker was installed on the vessels (R. 14-16). It would cost roughly $70,000 to equip either the S.S. John W. Boardman or the S.S. S. T. Crapo with an underfeed stoker and at least $100,000 each to equip them with oil burning equipment (R. 22).

The trial court filed a written opinion (R. 16-26) and a decree was entered dismissing the bill of complaint (R. 27). On appeal to the Supreme Court of Michigan, the decree entered in the trial court was affirmed (R. 28-34,.35).

SUMMARY OF ARGUMENT

1. Inasmuch as appellant's vessels and their equipment have been inspected, approved and licensed by the United States Coast Guard under authority from Congress, the Detroit smoke ordinance may not require the inspection and approval of the same equipment or impose criminal penalties for the emission of smoke which cannot at all times be avoided by vessels having equipment inspected and licensed by the United States Coast Guard.

2. The Commerce Clause of the United States Constitution in and of itself pre-empts the field where uniformity

is necessary and, therefore, the Detroit Smoke Ordinance may not validly be applied to vessels engaged in interstate commerce because it materially burdens such commerce where uniformity is necessary.

ARGUMENT

I.

WHERE CONGRESS HAS PROVIDED FOR THE INSPECTION AND LICENSING OF STEAMSHIPS, A CITY MAY NOT APPLY ITS SMOKE ORDINANCE TO SUCH STEAMSHIPS WHERE THE ORDINANCE IN EFFECT PROHIBITS THE USE OF THE EQUIPMENT ON SUCH STEAMSHIPS.

Article I, Sec. 8, Clause 3, of the Federal Constitution gives Congress the power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;".

Under this provision, Congress has enacted laws concerning steamships engaged in navigation and these laws are applicable to the Great Lakes. These statutes are compiled in Title 46 U. S. C.

Kelly v. Washington, 302 U. S. 1, 4 (1937). With reference to these acts, the Court said:

> "The federal acts and regulations with respect to vessels on the navigable waters of the United States are elaborate. They are well described in the argument of the Assistant Solicitor General as a maze of regulation. Provisions with respect to steam vessels are extremely detailed. 46 U. S. C. c 14, Sec. 361 *et seq.*"

70 Stat. 224 (b), 46 U. S. C. 392 (b) (1952 ed., Supp. V) provides that the Coast Guard is to inspect at least once

every two years the boilers, unfired pressure vessels and appurtenances thereof of all vessels other than passenger vessels. Subsection (c) provides that the Coast Guard is to determine to its satisfaction that the boilers, unfired pressure vessels and equipment may be safely employed in the service proposed. There is also contained in this section this sentence: "No boiler, unfired pressure vessel, or appurtenance thereof shall be allowed to be used if constructed in whole or in part of defective material or which because of its form, design, workmanship, age, use or for any other reason is unsafe" (App. 1a, 2a).

69 Stat. 86, 46 U. S. C. 399 (1952 ed., Supp. V) provides that when the inspection of a steam vessel is completed and the Coast Guard approves the vessel and *her equipment throughout*, a certificate to that effect shall be made (App. 3a). Plaintiff's Exhibit 2 (R. 38-41) is this certificate and after describing the boiler and other equipment, provides: "The said vessel is permitted to be navigated for one year on the Great Lakes" (R. 39). In accordance with 49 Stat. 1367, 46 U. S. C. 263 (1952 ed.) (App. 4a), plaintiff's Ex. A was issued (See photostat opposite R. 42). This exhibit is a consolidated certificate of enrolment and license and it includes the following:

> "LICENSE is hereby granted for the said vessel to be employed in carrying on the COASTING AND FOREIGN TRADE for ONE YEAR from the date hereof, and no longer."

Gibbons v. Ogden, 9 Wheat. 1, 213 (1824):

> "The word 'license' means permission, or authority; and a license to do any particular thing, is a permission or authority to do that thing; and if granted by a person having power to grant it, transfers to the grantee the right to do whatever it purports to authorize. It certainly transfer to him all

the rights which the grantor can transfer, to do what is within the terms of the license."

Admittedly, Congress, under the Commerce Clause has authority to control interstate commerce and the two licenses, above referred to, under *Gibbons* transfer to appellant's vessels the right to navigate the Great Lakes. The licenses include the right to use the vessels as equipped when inspected and when enrolled.

Section 2.2A of the Detroit smoke ordinance prohibits the emission of the kind of smoke which cannot be at all times prevented by vessels equipped with hand fired scotch marine boilers (App. 5a) (R. 18). Sec. 2.16 of the ordinance makes it unlawful to use any furnace or other combustion equipment or device in the city without a certificate of operation which issues only after inspection (App. 6a). Sec. 2.17, with exceptions not important here, provides for an annual inspection of every furnace or other combustion equipment used within the city (App. 6a). Under Sec. 2.20, if an owner has been previously notified of three or more violations of the ordinance within any consecutive twelve month period, such owner shall be notified to show cause before the Commissioner why the equipment should not be sealed. At the hearing, if the Commissioner finds that adequate corrective means have not been employed to remedy the situation, the equipment shall be sealed (App. 6a). Sec. 3.2 provides for a fine of $100.00 or imprisonment of not more than 30 days upon conviction of violation of any provision of the ordinance and that each day a violation is permitted to exist shall constitute a separate offense (App. 7a).

Thus, the ordinance requires the inspection and approval of the equipment which has been inspected and approved by the United States Coast Guard. The ordinance also

provides for the sealing of the equipment, if the owner is notified of three or more violations within a year, notwithstanding the fact that it has been approved by the Coast Guard under authority of Congress. The ordinance also provides for fine and imprisonment for violations of the ordinance which cannot be avoided through the use of equipment expressly approved and licensed by the federal government.

Kelly v. Washington, 302 U. S. 1, 4 (1937). Here the Court was discussing statutes of the State of Washington concerning the inspection of motor tugs and said:

> "The first question is whether the state legislation as applied to respondents' motor-driven tugs is in all respects in conflict with express provisions of the federal laws and regulations." Wherever such conflict exists, the state legislation must fall. *Gibbons v. Ogden*, 9 Wheat. 1, 210."

Appellant submits that the Detroit smoke ordinance is in conflict with the express provisions of the federal laws and regulations in that both provide for the inspection of the same equipment, to wit, the hand fired scotch marine boiler. Further, a certificate of operation would not issue under the ordinance for a scotch marine boiler and, therefore, such a boiler could not be used, although it had been inspected and approved by the United States Coast Guard. Further, the smoke ordinance contains criminal provisions for its violation which cannot at all times be avoided by vessels equipped with hand fired scotch marine boilers (R. 18). Thus, the use of equipment which is approved and licensed by the federal government for navigation on the Great Lakes could cause appellant and the officers of its vessels to be guilty of violating the ordinance.

It probably will be argued, that the Detroit ordinance is aimed at the prevention of air pollution and not at any

regulation of interstate commerce and that it affects interstate commerce, if at all, only indirectly and incidentally. Such an argument completely ignores the facts. It is true that the City of Detroit is not directly seeking to regulate interstate commerce, but the ordinance does so when the same can only be complied with through the use of certain equipment upon vessels engaged in interstate commerce. The city is, by indirection, saying that only certain equipment may be used in interstate commerce, thus preventing the use of other equipment. As Congress has already provided for the inspection of this equipment, there is a direct conflict between the acts of Congress and the Detroit ordinance. This conflict is emphasized when it is realized that equipment which the Coast Guard has inspected and *approved throughout* may not be used in Detroit and its use may bring appellant within the penal provisions of the ordinance.

The Boiler Inspection Act, Sections 22-34 of Title 45, U. S. C. provides for the inspection of railroad locomotives. It is not too dissimilar from the acts governing the inspection of steamships. Under the Boiler Inspection Act, the Court has had the problem of determining conflicts between state statutes and that Act. In that case, we believe the conflict was much less direct than in our case, for there the state statutes merely required the addition of certain equipment, but such statutes were held invalid because they and the Boiler Inspection Act were directed to the same subject, to wit, the equipment of locomotives. Here we have the ordinance prohibiting the use of the *particular equipment* which has been in all respects approved by the federal government.

Napier v. Atlantic Coast Line Railroad, 272 U. S. 605, 612 (1926). In Georgia a statute was passed requiring automatic fire doors on locomotives and in Wisconsin an-

other statute was passed requiring cab curtains during the winter. The Court held that both of these statutes were void even if the Interstate Commerce Commission had made no order requiring a particular type of fire door or cab curtain, holding that the Boiler Inspection Act conferred upon the Interstate Commerce Commission the exclusive power to specify the sort of equipment to be used on locomotives.

The Court said:

> "Did Congress intend that there might still be state regulation of locomotives, if the measures were directed primarily to the promotion of health and comfort and affected safety, if at all, only incidentally?
>
> The federal and state statutes are directed to the same subject—*the equipment of locomotives.* They operate upon the same object. It is suggested that the power delegated to the Commissioner has been exerted only in respect to minor changes or additions. But this, if true, is not of legal significance. It is also urged that, even if the Commission has power to prescribe an automatic fire box door and cab curtain, it has not done so; and that it has made no other requirement inconsistent with the state legislation. This, also, if true, is without legal significance. The fact that the Commission has not seen fit to exercise its authority to the full extent conferred, has no bearing upon the construction of the Act delegating the power. We hold that state legislation is precluded, because the Boiler Inspection Act, as we construe it, was intended to occupy the field. The broad scope of the authority conferred upon the Commission leads to that conclusion. Because the standards set by the Commission must prevail, requirements of the states are precluded, *however commendable or however different their purpose.*" (Emphasis added.)

Hill v. Florida, 325 U. S. 538, 542 (1945):

> "But here, this agent has been enjoined, and if the Florida law is valid he could be found guilty of a contempt of doing that which the act of Congress permits him to do. Furthermore, he could, under Section 14 of the state law, be convicted of a misdemeanor and subjected to fine and imprisonment. The collective bargaining which Congress has authorized contemplates two parties free to bargain and cannot thus be frustrated by state legislation. We hold that Section 4 of the Florida Act is repugnant to the National Labor Relations Act."

Service Storage and Transfer Co. v. Virginia, 359 U. S. 171, 176 (1959). Petitioner had been granted a certificate by the Interstate Commerce Commission to engage as a motor carrier between certain points. Freight from and to points in Virginia was routed through West Virginia. Virginia claimed that this was a sham and, that, the petitioner was guilty of engaging in intrastate freight business without permission and fined the petitioner $3,500. Held:

> "To uphold the criminal fine here assessed would be tantamount to a partial suspension of petitioner's federally granted certificate."

We submit that if the Detroit smoke ordinance is applicable to vessels engaged in interstate commerce, compliance with such ordinance necessarily dictates the equipment which must be used upon such vessels and, therefore, intrudes upon a field pre-empted by Congress.

II.

IF CONGRESS HAS NOT EXPRESSLY PRE-EMPTED THE FIELD, THE DETROIT SMOKE ORDINANCE MATERIALLY AFFECTS INTERSTATE COMMERCE IN MATTERS WHERE UNIFORMITY IS NECESSARY.

If the Detroit smoke ordinance may be validly applied to vessels engaged in interstate commerce, other cities, villages and hamlets on the Great Lakes could pass different and varying smoke ordinances. One city could pass an ordinance which couldn't be complied with even though the vessel had a properly installed underfeed stoker. Another city might pass a smoke ordinance which couldn't be complied with even if the vessel had oil burning equipment. This argument is not absurd because in *People v. Cunard White Star, Ltd.*, 280 N. Y. 413, 21 N. E. 2d 489 (1939), the Queen Mary was found guilty of violating a smoke ordinance of the City of New York by a lower court, even though the Queen Mary had oil burning equipment.

It is not a valid argument to say that if a vessel has equipment which will comply with the most severe smoke ordinance, that the vessel is, therefore, safe, because in the future an ordinance might be enacted which would require higher standards. It does not necessarily follow that a smoke ordinance would be unconstitutional even if it could not be complied with by a vessel with the best equipment. Then, too, courts of the various states might differ on whether a smoke ordinance is reasonable or unreasonable. It follows that if compliance with an ordinance is inseparably connected with the kind of equipment on a vessel, such ordinance affects interstate commerce where uniformity is required.

The effect of the Detroit ordinance on interstate commerce is material. In this case it would cost roughly $70,000 to equip each of the appellant's vessels with an underfeed stoker, and at least $100,000 to equip each vessel with oil burning equipment (R. 22). The cost is extremely material, and when that is multiplied by the number of vessels engaged in interstate commerce on the Great Lakes equipped with hand fired scotch marine boilers, the cost becomes fantastic. A city could pass a smoke ordinance which could be complied with only if some very different form of equipment is used and the cost of which cannot even be estimated.

In the Supreme Court of Michigan, in this case, there were several *amicus curiae* briefs filed. One was filed on behalf of Lake Carriers' Association. In this brief, it was stated in a footnote: "At the close of the 1957 navigation season the combined Canadian (282 vessels) and United States (415 vessels) Great Lakes commercial fleet totaled 697 vessels, including car ferries and passenger steamers. While the accurate figures are not available, it is estimated that of the total fleet, 463 burned coal for fuel, 277 being hand fired, of which 256 have hand fired scotch marine boilers. Undoubtedly, a great many of these vessels dock at Detroit or pass through waters within the boundary of the City of Detroit, to-wit, the Detroit River."

Morgan v. Virginia, 328 U. S. 373, 377 (1946). The provisions of the Virginia Code required separation of white and colored passengers on both interstate and intrastate motor carriers. The claim was made that this statute burdened interstate commerce, contrary to the Commerce Clause, even though Congress had enacted no legislation on the subject. The state claimed thaet this statute was

passed under the police power to avoid friction between the races. The Court said:

> "The precise degree of a permissible restriction on state power cannot be fixed generally or indeed not even for one kind of state legislation, such as taxation or health or safety. There is a recognized abstract principle, however, that may be taken as a postulate for testing whether particular state legislation in the absence of action by Congress is beyond state power. This is that the state legislation is invalid if it unduly burdens that commerce in matters where uniformity is necessary—necessary in the constitutional sense of useful in accomplishing a permitted purpose. Where uniformity is essential for the functioning of commerce, a state may not interpose its local regulation * * *."

P. 378:

> "In the field of transportation, there has been a series of decisions which hold that where Congress has not acted and although the state statute affects interstate commerce, a state may validly enact legislation which has predominantly only a local influence on the course of commerce. It is equally well settled that, even where Congress has not acted, state legislation or a final court order is invalid which materially affects interstate commerce."

Southern Pacific Co. v. Arizona, 325 U. S. 761, 773 (1945). Arizona limited passenger trains to 14 cars, freight trains to 70 cars.

> "Enforcement of the law in Arizona, while train lengths remain unregulated or are regulated by varying standards in other states, must inevitably result in an impairment of uniformity of efficient railroad operation because the railroads are subjected to regulation which is not uniform in its application."

P. 775:

> "If one state may regulate train lengths, so may all the others, and they need not prescribe the same maximum limitation. The practical effect of such regulation is to control train operations beyond the boundaries of the state enacting it because of the necessity of breaking up and reassembling long trains at the nearest terminal points before entering and after leaving the regulating state. The serious impediment to the free flow of commerce by the local regulation of train lengths and the practical necessity that such regulation, if any, must be prescribed by a single body having a nation-wide authority are apparent."

Kelly v. Washington, 302 U. S. 1, 14 (1937):

> "*Third.* The remaining question is whether the state law must fall in its entirety, not because of inconsistency with federal action, but because the subject is one as to which uniformity of regulation is required and hence, whether or not Congress has acted, the State is without authority. *Cooley v. Board of Wardens*, 12 How. 299, 319; *Minnesota Rate Cases*, 230 U. S. 352, 399, 400.
>
> "The state law is a comprehensive code. While it excepts vessels which are subject to inspection under the laws of the United States, it has provisions which may be deemed to fall within the class of regulations which Congress alone can provide. For example, *Congress may establish standards and designs for the structure and equipment of vessels, and may prescribe rules for their operation, which could not properly be left to the diverse action of the States.* The State of Washington might prescribe standards, designs, equipment and rules of one sort, Oregon another, California another, and so on." (Emphasis added.)

Freeman v. Hewit, 329 U. S. 249, 252 (1946). This case involves the Indiana Gross Income Tax Act of 1933. The Court said:

> "Our starting point is clear. In two recent cases we applied the principle that the Commerce Clause was not merely an authorization to Congress to enact laws for the protection and encouragement of commerce among the States, but by its own force created an area of trade free from interference by the States. In short, the Commerce Clause even without implementing legislation by Congress is a limitation upon the power of the States. *Southern Pacific Co. v. Arizona*, 325 U. S. 761; *Morgan v. Virginia*, 328 U. S. 373. In so deciding we reaffirmed, upon fullest consideration, the course of adjudication unbroken through the Nation's history. This limitation on State power, as the *Morgan* case so well illustrates, does not merely forbid a State to single out interstate commerce for hostile action. A State is also precluded from taking any action which may fairly be deemed to have the effect of impeding the free flow of trade between States. It is immaterial that local commerce is subjected to a similar encumbrance. It may commend itself to a State to encourage a pastoral instead of an industrial society. That is its concern and its privilege. But to compare a State's treatment of its local trade with the exertion of its authority against commerce in the national domain is to compare incomparables."

The operating equipment on vessels, its manufacture, design and characteristics is extremely important to navigation. If every state, city, village or hamlet may inspect such equipment and decree that only equipment meeting its requirement may be used, navigation will soon cease.

It is respectfully submitted that the Detroit smoke ordinance materially burdens interstate commerce in matters where uniformity is necessary and, therefore, may not be validly applied to appellan's vessels.

CONCLUSION

For the reasons stated, it is respectfully submitted that the decree of the court below should be reversed and that the Detroit smoke ordinance be held unconstitutional as to appellant's vessels, except where the prohibited smoke is caused by improper firing or by the improper use of the equipment upon said vessels.

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January 15th, 1960.

APPENDIX

34 Stat. 68, 46 U. S. C. 362 (1952 ed.). The first paragraph is as follows:

> All steam vessels navigating any waters of the United States which are common highways of commerce or open to general or competitive navigation, excepting public vessels of the United States, vessels of other countries, and boats propelled in whole or in part by steam for navigating canals, shall be subject to the provisions of title 52 of the Revised Statutes.

R. S. 4401, 46 U. S. C. 364 (1952 ed.) is as follows:

> All coastwise seagoing vessels, and vessels navigating the Great Lakes, shall be subject to the navigations laws of the United States, when navigating within the jurisdiction thereof; and all vessels, propelled in whole or in part by steam, and navigating as aforesaid, shall be subject to all the rules and regulations established in pursuance of law for the government of steam vessels in passing, as provided by this Title; and every coastwise seagoing steam vessel subject to the navigation laws of the United States, and to the rules and regulations aforesaid, not sailing under register, shall, when under way, except on the high seas, be under the control and direction of pilots licensed by the Coast Guard.

70 Stat. 223, 46 U. S. C. 391 (1952 ed., Supp. V) is as follows:

> (b) The head of the department in which the Coast Guard is operating shall require the Coast Guard to inspect before the same shall be put into service, and at least once in every two years there-

after, the hull of each steam vessel, not carrying passengers; to determine to its satisfaction that every such vessel so submitted to inspection is of a structure suitable for the service in which she is to be employed, has suitable accommodations for the crew, and is in a condition to warrant the belief that she may be used in navigation, with safety to life, and that the vessel is in full compliance with the applicable requirements of this title or Acts amendatory or supplementary thereto and regulations thereunder; and if deemed expedient, to direct the vessel to be put in motion or to adopt any other suitable means to test her sufficiency and that of her equipment.

70 Stat. 224, 46 U. S. C. 392 (1952 ed., Supp. V) provides as follows:

(b) The head of the department in which the Coast Guard is operating also shall require the Coast Guard to inspect, before the same shall be put into service and at least once in every two years thereafter, the boilers, unfired pressure vessels, and appurtenances thereof, also the propelling and auxiliary machinery, electrical apparatus and equipment, of all vessels subject to inspection other than passenger vessels.

(c) The head of the department in which the Coast Guard is operating shall require the Coast Guard to determine to its satisfaction by thorough examination that the boilers, unfired pressure vessels, and appurtenances thereof, also the propelling and auxiliary machinery, electrical apparatus and equipment of all vessels which are subject to inspection under subsections (a) and (b) herein are in conformity with law and the rules and regulations of the head of the department in which the Coast Guard is operating, and may be safely employed in the service proposed. No boiler, unfired pressure vessel, or appurtenances thereof shall be allowed to

be used if constructed in whole or in part of defective material or which because of its form, design, workmanship, age, use, or for any other reason is unsafe.

69 Stat. 86, 46 U. S. C. 399 (1952 ed., Supp. V), provides in part as follows:

> When the inspection of a steam vessel is completed and the Secretary of the Department in which the Coast Guard is operating approves the vessel and her equipment throughout, he shall make and subscribe a certificate to that effect. He shall deliver such certificate to the master or owner of the vessel to which it relates, shall keep one copy thereof on file in his office, and shall deliver one copy to the official who is performing the duties of the collector or other chief officer of the customs of the district in which such inspection has been made, who shall keep the same on file in his office.

53 Stat. 798, 46 U. S. C. 496 (1952 ed.) is as follows:

> A register, enrollment, or license shall not be granted, or other papers be issued by any collector or other chief officer of customs to any vessel subject by law to inspection under this title (R. S. 4399-4500) until all the provisions of such title applicable to such vessel have been fully complied with and until the copy of the certificate of inspection required by such title for such vessel has been filed with said collector or other chief officer of customs: *Provided*, That the license granted to any vessel, if presented to any collector of customs at any time within thirty calendar days prior to the date of expiration shown thereon, may be renewed by the endorsement by the collector of customs for a period of one year from the date of expiration shown on the license, if there be on file in the office of the collector at that time a copy of the certificate of inspection required by title 52 of the Revised Statutes, which is in force on the date renewal is made.

49 Stat. 1367, 46 U. S. C. 263 (1952 ed.) is as follows:

The form of a license for carrying on the coasting trade or fisheries shall be as follows:

"License for carrying on the (here insert 'coasting trade', 'whale fishery', 'mackerel fishery', or 'cod fishery', as the case may be).

"In pursuance of Title L (R. S. 4311-4390), 'Regulation of Vessels in Domestic Commerce', of the Revised Statutes of the United States, (inserting here the name of the husband or managing owner, with his occupation and place of abode, and the name of the master, with the place of his abode), having sworn that the (insert here the description of the vessel, whether ship, brigantine, scow, schooner, sloop, or whatever else she may be); called the (insert here the vessel's name), whereof the said (naming the master) is master, burden (insert here the number of tons, in words) tons, as appears by her enrollment, dated at (naming the district, day, month, and year, in words at length, but if she be less than twenty tons, insert, instead thereof, 'proof being had of her admeasurement'), shall not be employed in any trade, while this license shall continue in force, whereby the revenue of the United States shall be defrauded, and having also sworn (or affirmed) that this license shall not be used for any other vessel, or for any other employment, than is herein specified, license is hereby granted for the said (inserting here the description of the vessel) called the (inserting here the vessel's name), to be employed in carrying on the (inserting here 'coasting trade', 'whale fishery', 'mackerel fishery', or 'cod fishery', as the case may be), for one year from the date hereof, and no longer. Given under my hand and seal, at (naming the said district), this (inserting the particular day) day of (naming the month), in the year (specifying the number of the year in words at length);": *Provided,* That vessels

of five net tons and over entitled under the laws of the United States to be enrolled and licensed or licensed for the coasting trade may be licensed for the 'coasting trade and mackerel fishery', and shall be deemed to have sufficient license for engaging in the coasting trade and the taking of fish of every description, including shellfish: *Provided further*, That the provisions of sections 310 and 311 of this title shall be, and are made applicable to vessels so licensed: *And provided further*, That vessels operating on the Great Lakes and their connecting and tributary waters under enrollment and license issued in conformity with the provisions of section 258 of this title, shall be deemed to have sufficient license for engaging in the taking of fish of every description within such waters without change in the form of enrollment and license prescribed under the authority of that section.

SMOKE ORDINANCE

Section 2.2A:

It shall be unlawful within the City of Detroit for any person, firm or corporation to permit the emission of any smoke from any source whatever of a density equal to or greater than that density described as No 2 of the Ringlemann Chart; Provided, That the following exceptions to the provisions of this section shall be permitted:

(a) Smoke, the shade or appearance of which is equal to but not darker than No. 2 of the Ringlemann Chart for a period, or periods, aggregating four minutes in any 30 minutes;

(b) Smoke, the shade or appearance of which is equal to but not darker than No. 3 of the Ringlemann Chart for a period, or periods, aggregating three minutes in any 15 minutes, when building a

new fire or when breakdown of equipment occurs such as to make it evident that the emission was not reasonably preventable.

Section 2.16:

It shall be unlawful for any person, firm or corporation to use or operate any furnace or other combustion equipment or device which is subject to annual inspection, as hereinafter set forth, without a certificate of operation; provided, however, that if application for such certificate of operation has been made and the required inspection fee paid, it shall be lawful to use such furnace or other fuel-burning equipment or device until receipt of such certificate or until notification by the Bureau of its refusal to grant such certificate.

Section 2.17:

Every furnace or other combustion equipment or device shall be inspected annually and a report and permanent record made of such inspection by the Bureau except the following:

(1) Furnaces or other combustion equipment or devices installed to heat buildings used exclusively for private residences containing less than three dwelling units or flats, and

(2) Combusion equipment or devices used exclusively for private residences which do not contain a central heating plant.

Section 2.20:

After any owner, agent, occupant, manager or lessee of any premises has been previously notified of three or more violations of this Ordinance within any consecutive 12-month period; in respect to the emission of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dusts, the owner,

agent, occupant, manager or lessee of said premises shall be notified to show cause before the Commissioner not less than ten days from the date of notice, why the equipment causing such violation should not be sealed.

(a) The notice herein provided for may be given by mail directed to the last known address of the party to be notified, or if said party or his whereabouts is unknown, then by posting a notice on or near the premises at which the violations shall have occurred. Upon said date said violator may appear and be heard. Upon such hearing, if the Commissioner finds that adequate corrective means and methods have not been employed to correct the cause of such condition then it shall be his duty to seal said equipment until such time as a permit and certificate as herein provided have been applied for and issued for said plant.

(b) It shall be unlawful for any person to break a seal of any refuse burning equipment, any boiler or any equipment or device producing heat or power, that has been duly sealed by the Commissioner or his authorized representative.

Section 2.21:

When a certificate of operation is refused in the case of an original inspection or a case of an annual inspection, the Commissioner is authorized to seal, immediately, the furnace or other combustion equipment until the owner, lessee or other person required to procure the certificate of operation shall have complied with the provisions of this Ordinance.

Section 3.2:

Any person, persons, firm, partnership, association or corporation or any one acting in behalf of said person, persons, firm, partnership, association or corporation violating any of the provisions of

this Ordinance shall upon conviction thereof be subject to a fine of not more than one hundred dollars ($100.00) or to imprisonment in the Detroit House of Correction for a period of not more than thirty (30) days, or to both such fine and imprisonment in the discretion of the court. Each day that a violation of this Ordinance is continued or permitted to exist without compliance shall constitute a separate offense punishable upon conviction in the manner prescribed in this section.